Office-Supreme Court, U.S.
FILED
DEC 18 1982
ALEXANDER L. STEVAS,
CLERK

NOS. 81-2245, 81-2276 & 82-38

# IN THE
# SUPREME COURT
## OF THE
## UNITED STATES

OCTOBER TERM, 1982

STATE OF NEVADA,
*Petitioner,*

v.

UNITED STATES OF AMERICA, et al.,
*Respondent.*

and

TRUCKEE-CARSON IRRIGATION DISTRICT,
*Petitioner,*

v.

UNITED STATES OF AMERICA and
PYRAMID LAKE PAIUTE TRIBE OF INDIANS,
*Respondent.*

and

PYRAMID LAKE PAIUTE TRIBE OF INDIANS,
*Cross-Petitioner,*

v.

TRUCKEE-CARSON IRRIGATION DISTRICT, et al.,
*Cross-Respondents.*

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

**Brief of Amicus Curiae Yakima Valley Canal Company and Union Gap Irrigation District in Support of Petitioners Truckee-Carson Irrigation District and the State of Nevada**

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## INTEREST OF AMICUS CURIAE

Amicus Curiae, Union Gap Irrigation District and Yakima Valley Canal Company, are parties to a pending lawsuit involving the question of the preclusive effect, as to Indian treaty claims to use of water, of a

consent judgment to which the United States, in its trust and supervisory capacity, was a party. *Kittitas Reclamation District, et al* v. *Sunnyside Valley Irrigation District, et al*, Nos. 80-3505, 81-3002, 81-3068, 81-3069 Slip Opinion September 10, 1982, __F.2d __(9th Cir., 1982) (pet. reh. pending), (which case is referred to herein as "*Kittitas II*"). They are also parties to a Washington State Court general adjudication proceeding in which the same question probably will arise. *State of Washington, Department of Ecology v. Acquavella*, Yakima County, Washington Superior Court Cause No. 77-2-01484-5 (which case is herein referred to as "*Aquavella*").

The issues presently before this court involve far more than rights to use of waters of the Truckee River in the State of Nevada. The repose of long-established property rights and the economic survival of farmers in federal irrigation projects throughout the arid western states may be at stake. This potential widespread and serious impact produces the interest of amici and is demonstrated by examination of similar circumstances and legal issues affecting a comparable irrigation project in the State of Washington, the Yakima Project of the United States Bureau of Reclamation. The nature and economics of the Yakima Project and legal issues relating to a consent judgment entered January 31, 1945, in regard to the waters of the Yakima River basin illustrate the nature, potential impact and serious implications this case has for the existence of

extensive, valuable, non-Indian developments and the economic survival of large, innocent, non-Indian populations.

The Union Gap Irrigation District and Yakima Valley Canal Company divert surface waters for irrigation in the Yakima River basin in the south central part of the State of Washington. They hold natural flow and storage rights typical of the water rights held by the various irrigation districts and canal companies in the Yakima River basin. Those rights have been governed for over 35 years by a consent judgment entered in the United States District Court for the Eastern District of Washington on January 31, 1945.

The Yakima River basin contains approximately 6,000 square miles (an area larger than the State of Connecticut) and almost all of Kittitas and Yakima Counties and one-half of Benton County.(1)* See Map, Appendix 2. The basin extends 175 miles from the crest of the Cascade Mountain range to the confluence of the Yakima and Coumbia rivers near Kennewick, Washington.(2) About 65% of the basin is publicly owned (approximately 40% in a military reservation, national forests and the federal reservation for the Hanford Project) or within the Yakima Indian Reservation (approximately 25%). Only about 35% is privately owned.(2.1)

The basin is in the rain shadow of the Cascade Mountains.(3) Average annual rainfall is about 7". The

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* *Footnotes are in Appendix 1 hereto.*

months of July and August are particularly dry, receive less than 5% of the total annual precipitation and commonly include periods of four to six weeks without any rain.[4] Most of the annual precipitation occurs in the winter.[5] Seventy-five percent comes in the months of October through March.[6]

The average annual runoff is approximately 2.6 million acre feet. It usually reaches its highest level during May and June and drops to its lowest point in August.[7] Ninety-two percent of the runoff comes from the forested areas of the Cascade Mountains.[8]

Irrigation in the Yakima Basin began before the turn of the century. By 1905, the natural flow of the Yakima River was fully appropriated and used. Some 125,000 acres were irrigated (about 25% of present development).[9]

Without storage reservoirs the flows in the Yakima River basin could not meet late summer irrigation demands.[10] Investigations to develop water storage and distribution facilities were begun about 1903 by the United States Reclamation Service.[11] In 1905, the United States undertook, as more fully described later, to eliminate legal obstacles to such development. Pursuant to legislation specifically adopted by the State of Washington for that purpose, the United States filed a withdrawal of all of the unappropriated waters of the Yakima River and its tributaries. Those waters were thereby held for the United States for irrigation.[12]

In 1906, Congress authorized funds for the construction of the Yakima Project.[13] Construction of six storage dams and reservoirs in the Cascade Mountains was begun in 1909 and completed in 1933. The project works constructed by the United States also include hydroelectric plants, diversion dams, canals and laterals in the six divisions of the project. The six reservoirs hold 1,070,000 acre feet of water.[14] They are operated to conserve winter and spring flows for release during the summer irrigation season.[15] Since 1933 no further storage has been constructed in the basin.[16]

For many years the surface waters of the Yakima Basin have been fully appropriated. No further natural flows or storage waters are available for diversion. Additional deliveries from storage would require construction of additional storage facilities.[17]

The assured supply of sufficient quantities of water for irrigation, upon which the economic health of the Yakima basin depends, rests upon a legal foundation established by the United States over a period of years beginning in 1905. At that time, the complete appropriation of the natural flow of the Yakima River had given rise to several lawsuits including an action to enjoin diversions for the Yakima Indian Reservation.[18] The Secretary of the Interior required that all litigation, difficulties or controversies in any way tending to embarrass, prevent or restrict the appropriation and use of water in the Yakima River "be settled and determined" before the United States would develop

irrigation facilities for the basin.[19] As a result, limiting agreements were signed by the diverters of 90% of the water,[20] and the claim of the Yakima Indian Reservation was settled by the Secretary at 147 second feet of the low water flow of the Yakima River.[21]

The settlement for the Yakima Indian Reservation at 147 second feet soon grew into a controversy which embarrassed development throughout the basin.[22] In 1913, a joint commission was appointed by Congress to investigate procurement of impounded waters for the reservation and the Indians. The commission in its report noted the existence of the fishing rights of the Indians under the 1855 Treaty with the Yakimas (12 Stat. 951), found that the controlling purpose of the treaty was to establish the Yakimas as an agricultural people and that the United States had totally appropriated the waters of the Yakima basin for irrigation.[23] The joint commission also reported that the low water flow of the Yakima River was insufficient to supply both the rights of the Indian reservation and vested rights to off-reservation use of water. It recommended that Congress provide, free of storage costs, the amount of water to which the reservation was equitably entitled.[24] In response, Congress in 1914 provided additional water from storage to give the Indians 720 second feet of water as their equitable share of the low water flow of the Yakima River. This additional 573 second feet of water was supplied free of storage charges.[25]

When it was later determined that, because of the full development of the Yakima basin by the United States, the amount of water set aside for the reservation in 1914 was a maximum as well as a minimum quantity of water, another 100,000 acre feet of stored water was provided annually.[26] Congress approved funding for this in 1940.[27] In addition, the reservation has been provided with another 250,000 acre feet of storage water by contract with the United States.[28]

The largest single district in the project at the present time is the 140,000 acre Wapato Irrigation Project operated by the United States Bureau of Indian Affairs.[29] The area irrigated within the Yakima Indian Reservation is greater than the entire area irrigated in the Yakima Basin prior to the construction of the Yakima Project.[30] Approximately 55% of the land in the Wapato Project is held in trust by the United States. The remainder has been deeded to individuals.[31] The population of the Indian reservation is approximately 25,000 people of which about 5,000 are Indians.[32]

In 1939, the United States, as plaintiff, with two irrigation districts, commenced an action in the United States District Court for the Eastern District of Washington against 20 irrigation districts and canal companies and nine individuals. Typically, the Yakima Indian Nation was not joined as a separate party. The United States in its complaint, *inter alia*, recognized the interdependence and interrelationship of the water

rights of the parties, claimed it had given notice that it would seek a judicial determination of Yakima Project water rights in which all parties affected would be joined, and sought a declaration of the rights of the United States against the several defendants and of the defendants against each other.(33) Several of the irrigation districts counter-claimed for a determination of the rights of all users (diverters) of water from the Yakima River and its tributaries.(34) The parties to this suit included diverters of 85% to 95% of the total water diverted in the basin.(35)

More than five years later in the same case, the United States, acting on its own behalf, for the U.S. Bureau of Reclamation, and in its trust and supervisory capacity for the Yakima Indians, presented to the district court a consent judgment whereby the total water supply in the basin was to be distributed by the United States to the various parties to the suit and others. The judgment was agreed to by all parties (including the United States) in lieu of a general adjudication of the surface waters of the Yakima basin. The judgment was entered January 31, 1945, and provided that it constituted a final determination of the obligations of the United States to deliver water from the Yakima River and its tributaries, the United States' reservoirs and other sources. All parties (including the United States) were forever restrained and enjoined from asserting any claim to, or interfering with, any of the rights to use or delivery of water provided

in the judgment.[36]

Although the diverters of 5% to 15% of the surface waters had not been made parties, the 1945 judgment was intended, as between the parties to the suit, to have the effect of a general adjudication. Although the Yakima Indian Nation, as such, was not a party to the suit, the United States participated in the suit for the Indians in its trust and supervisory capacity. In that capacity, the United States dealt with the tribe's *Winters Doctrine* rights and additional rights provided by Congress. Although the judgment did not explicitly preclude the use of water for preservation and enhancement of fish life, it established a regimen of water use inconsistent with enlarged instream flows for maximum preservation and enhancement of fish life at all times and places. Instead, it established only a minimum instream flow for that purpose at one place and certain times.

After entry of the consent judgment, contracts were entered into by the United States with various irrigation districts on the basis of the judgment. Irrigation continued to develop on the basis of the water rights established by the judgment. People moved into the basin, and farms, communities and industries were established on the basis of that development.

The Yakima basin at the present time contains about one-third of the irrigated land in the State of Washington, about 500,000 acres.[37] Over 400,000 acres of this land is serviced by the Yakima Project.[38] By

1981, the Yakima Project contained over 12,000 farms, a farm population of over 38,000 people, and a total population of approximately 175,000 people, including urban and suburban residents.[39] The entire population of the basin is largely dependent for its existence upon the agricultural economy of the area.

Sixty kinds of fruit, vegetables, seed, grain, forage and specialty crops are produced in Yakima County alone.[40] Of the 3,072 counties in the United States, Yakima County ranks first in the production of apples, mint and hops and fifth in overall agricultural production.[41] The gross value of crops produced in the Yakima Project in 1981 was approximately 370 million dollars.[42]

The limitation of Indian water rights established by the Secretary of the Interior in 1905 and the rights created by the 1945 Consent Judgment are of great consequence to the people and economy of the Yakima River basin. They will be vitally affected by the rationale and scope of the decisions of this court in the above-captioned cases. This is true notwithstanding three factual differences between the Yakima basin and *Orr Ditch* litigation, namely:

(1) The *Orr Ditch* adjudication was clearly a general adjudication while the Yakima basin adjudication involved the diverters of 85% to 95% of the water;

(2) The Truckee-Carson Irrigation District was not a named party to the *Orr Ditch* litigation, whereas in the Yakima basin litigation diverters other than the

Indians were joined and separately represented and the Bureau of Indian Affairs had separate Department of Justice attorneys; and

(3) The provision of water for fish life was not considered in the *Orr Ditch* proceedings, but was considered to a limited extent in the Yakima basin judgment.

Today the United States, in disregard of the 1945 Yakima basin judgment, is asserting rights to additional water for fish life in *Kittitas II* and claiming additional rights to water for the Yakima Indian Nation, Wenatchee National Forest and the Toppenish National Wildlife Refuge in *Acquavella*.[43] In the latter case, the United States continues its historical practice of representing conflicting claims and resolving the conflicts at the administrative level. The Yakima Indian Nation is not a party to either suit and has refused an invitation by the Washington State Supreme Court to intervene in *Acquavella*. The Yakima Indian Nation has notified the parties to *Acquavella* that the United States is not representing it adequately and pointed to a number of positions taken by the United States with which the Tribe disagrees as evidence of the inadequacy.[44]

## ARGUMENT

The Pyramid Lake Paiute Tribe's Cross Petition for Writ of Certiorari challenges the decisions of both the District Court and the Circuit Court giving a res judicata, claim preclusion effect to the 1944 judgment entered in the *Orr Ditch* proceedings. The basis for the

challenge includes the claims that the right to use of water for fishery purposes was not actually litigated in and the Tribe was not a party to the prior suit and different evidence would have been required to prove the Tribe's water right for fishery than that required to prove its irrigation water right. Cross Petition for Writ of Certiorari p.i.) The opinion of the Court of Appeals held that the claim for water for fish life was part of the cause of action asserted in the *Orr Ditch* proceedings, *United States* v. *Truckee-Carson Irrigation District*, 649 F.2d 1286, 1301, 1302 (9th Cir., 1981) and that the general rule that representation by the United States binds the Indians applied to preclude the claim for water for fish. *United States* v. *Truckee-Carson Irrigation District*, 649 F.2d at 1306-1308. Each of these holdings is of concern to amici.

**Claim Preclusion — When It Applies**

The holding of the Court of Appeals as to the scope of the *Orr Ditch* cause of action is correct. It is, nevertheless, imperative that this aspect of the opinion not be interpreted so narrowly that parties to water rights litigation will be deprived of the benefits of claim preclusion. Between such parties and their privies, the scope of claim preclusion depends upon the scope of the claims asserted in the prior water right litigation, and not upon whether that litigation technically constitutes a general adjudication. Where the litigation constitutes a general adjudication, broad claim preclusion is to be anticipated. Where it does not, claim pre-

clusion between the parties will, nevertheless, ensue from a valid judgment. Thus, res judicata effect is given between the parties to judgments in water litigation in which only a limited number of water users were parties. *Montezuma Canal Co.* v. *Smithville Canal Co.*, 218 U.S. 371 (1910); *United States* v. *Fallbrook Public Utility District*, 347 F.2d 48, 57, 58, 60 (9th Cir., 1965); *cf Utah Construction Co.* v. *Salmon River Canal Co.*, 85 F.2d 769, 771 (9th Cir., 1936). In such cases the judgments are given effect as a division between the parties of the rights held by them in combination to the use of waters in the stream system. *United States* v. *Fallbrook Public Utility District*, *supra*, 347 F.2d at 57, 58, 60.

A clear expression in this case of the rationale of claim preclusion is necessary to avoid a mischievous interpretation which will deny claim preclusion between the parties to water rights cases which do not constitute full, general, water rights adjudications. Indeed, the United States has already cited the opinion of the Court of Appeals in this case for that proposition in *Kittitas II* and a panel of the Court of Appeals has accepted that argument. *Kittitas II*, __ F.2d at __; Brief for the United States pp. 20-23. Although that proposition is erroneous, contrary to the decisions just cited and subject to a pending petition for rehearing in *Kittitas II*, its potential for disestablishment for long-settled matters is apparent.

The stability and integrity of western water rights

judgments requires a clear statement by this court in this case of its rationale as to the res judicata effect of the *Orr Ditch* 1944 Consent Judgment if repetition of this mischievous interpretation is to be avoided.

**Claim Preclusion — Scope**

The purpose of the doctrine of res judicata is to avoid the uncertainty and confusion which ensues when the conclusive character of judgments is undermined. The doctrine serves vital public interests. Public policy dictates that there be an end to litigation. Res judicata is a rule of fundamental justice, of public policy and private peace which should be cordially regarded and enforced by the courts. *Federated Department Stores, Inc.* v. *Moitie*, 452 U.S. 394, 101 S.Ct. 2424, 2429 (1981). An important part of the rule is that the finality of judgments between parties and their privies extends not only to what has been pleaded or litigated, but also what might have been litigated. *Federated Department Stores* v. *Moitie, supra*, 101 S.Ct. at 2427, 2428; *Werlein* v. *New Orleans*, 177 U.S. 390 (1900); *Cromwell* v. *Sac County*, 94 U.S. 351 (1876); *Hatchitt* v. *United States*, 158 F.2d 754 (9th Cir., 1946).

The opinion of the Court of Appeals recognized that the policies served by res judicata apply with special force where titles to real property are involved. *United States* v. *Truckee-Carson Irrigation District, supra*, 649 F.2d at 1308, citing *Minnesota Mining Co.* v. *National Mining Co.*, 70 U.S. (3 Wall.) 332, 334 (1866); *United States* v. *Title Insurance & Trust Co.*,

265 U.S. 472, 486-487 (1924). To this it should be added that, in such cases, there is a clear need for final resolution of all claims affecting the property. Claimants, including the United States, must therefore, advance in their first suit all of their claims relating to events which occurred before that suit. *Northern Pacific Railway Co.* v. *Slaght*, 205 U.S. 122 (1907); *United States* v. *California & Oregon Land Co.*, 192 U.S. 355 (1904); *Hatchitt* v. *United States*, 158 F.2d 754 (9th Cir., 1946). Thus, in water rights litigation all claims of the parties to use of waters from the source before the court must be asserted or lost.

The failure of the United States to assert a claim for the reservation fishery against the water to which rights were being adjudicated does not enable either the United States or its Indian wards to avoid preclusion of that claim in later proceedings.

Similarly, the fact that proof of the quantity of water needed for the fishery requires additional evidence does not make the claim for water for such a purpose part of a different cause of action than a claim for water for irrigation. Both are based upon the same executive order, the same reservation and the same source of water. They are but different grounds for the same cause of action. The United States was bound to assert all grounds for its cause of action in the first proceeding. The judgment in that proceeding is conclusive as to such matters whether or not they were asserted. *United States* v. *California & Oregon Land*

*Co.*, 192 U.S. 355, 24 S.Ct. 266, 268 (1904); *Werlein* v. *New Orleans*, 177 U.S. 390, 20 S.Ct. 682, 686 (1900).

**Joinder Of Tribes As Parties**

A requirement that Indian tribes must be joined as parties in water rights adjudications would mark an abrupt departure from the established rule of plenary control by the United States over Indian affairs and property rights. *Colorado River Water Conservation District* v. *United States*, 424 U.S. 800, 805-813 (1976); *Heckman* v. *United States*, 224 U.S. 413, 442-447 (1912); *United States* v. *Minnesota*, 270 U.S. 181, 193-194 (1926); *United States* v. *California & Oregon Land Co.*, 192 U.S. 355, 358 (1904). Applied retroactively, it would jeopardize water rights throughout the west. In view of the sovereign immunity enjoyed by the tribes, *Santa Clara Pueblo* v. *Martinez*, 436 U.S. 49, 56 (1978), such a rule would impose an impossible standard for water rights litigation in the west. The Tribes could not be joined and their rights could not be adjudicated unless the Tribes intervened. Such intervention would be doubtful, particularly in state courts. The purpose of the *McCarran Amendment*, 43 USC Sec. 666, would be defeated. See *Colorado River Water Conservation District* v. *United States*, 424 U.S. 800, 810-813 (1976). Existing rights would be invalidated. Massive litigation would be necessary, but would be futile. Western water rights would be plunged into chaos and the congressional policies embodied in the *McCarran Amendment* totally frustrated. At the same

time, it has yet to be demonstrated that the purposes of Indian treaties to make the Indians an agrarian people would be advanced. The sole result would be mischief of unimaginable proportions.

Intervention in water adjudications by Indian Tribes is obviously no substitute for plenary control by the United States of such litigation. The interests of the judicial system and the Tribes are adequately served by the ability of the Tribes to intervene and supplement, but not displace, conduct of litigation by the United States. *State of New Mexico* v. *Aamodt*, 537 F.2d 1102, 1106, 1107 (10th Cir., 1976).

It is of critical importance that this court not only repudiate the notion that the Tribes, as such, must be parties to litigation affecting their waters, but also use care to avoid establishing a rule which indirectly has the same effect. The court should reject the proposition that whenever the United States has a conflict of interest in such litigation, its representation will be inadequate and any resulting judgment will not bind Indians so represented. It is doubtful that many western water litigation judgments will measure up to such a standard. Neither the existence of a conflict of interest on the part of the United States nor other "inadequacies" of representation should invalidate existing judgments unless fraud or collusion is present. If such grounds invalidate water rights judgments, then a pandemic attack on such judgments will be invited. Such a rule, like a requirement that the Tribes must be

joined as parties in water rights litigation, will lead to wholesale destabilization of long standing western water rights, land values and farm operations.

## SUMMARY OF ARGUMENT

1. This court should affirm the holding of the Court of Appeals that the claims of the United States and the Tribe for water for the Indian fishery are precluded by the *Orr Ditch* decree. The rationale for such affirmance should be drawn carefully so that it will not undermine the res judicata effect between the parties to judgments in other, prior water rights litigation which may not technically rise to the level of general adjudications. The judgments in those cases should remain effective between the parties and their privies as to all water rights held by them in combination.

2. The fundamental purposes of the doctrine of res judicata, particularly as it applies to property cases, requires affirmance of the holding that the claims for water for the Indian fishery are precluded by the *Orr Ditch* decree. Those claims could and should have been asserted in the first case. The failure of the United States to assert them then does not prevent their preclusion now.

3. This court should reject the contention that judgments in water litigation are not binding as to Indian water rights where the Tribes have not been joined as parties or the United States has a conflict of interest. The contention is inconsistent with the historical, plenary control by the United States over Indian property

rights and the current national policy of settling of water rights. The retroactive application of such a rule would deprive innumerable, innocent non-Indians who relied upon the national policy of reclamation of the west of assured, established water rights and, perhaps, deprive them of the value of their land. They would be punished for the alleged wrongs of their government. The current national policy of adjudication of water rights would not only be frustrated, but would be replaced by a policy of invalidation of prior adjudications. Absent fraud or collusion such adjudications should be binding on parties and privies.

A fairer ruling, more consistent with national policy, would allow, retroactively, Indians to have compensation for their actual losses suffered as a result of these alleged wrongs, and establish, prospectively, such compensation and an assured right of intervention where needed.

## CONCLUSION

As to the *Orr Ditch* users and subsequent appropriators the Court of Appeals should be affirmed. This court, however, in its opinion should be aware of and avoid disestablishment of those rules and doctrines which are essential to the stability and economic health of the arid west.

No attempt has been made to argue in depth the merits of the Truckee-Carson Irrigation District contentions. This court, however, should avoid a ruling which invalidates water rights judgments as to parties

(and their privies) who are not guilty of fraud or collusion. Indian interests will be adequately protected by compensation for past wrongs and intervention and compensation in the future.

Respectfully submitted,

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*December, 1982*

# APPENDIX 1

## FOOTNOTES TO BRIEF OF AMICUS CURIAE UNION GAP IRRIGATION DISTRICT AND YAKIMA VALLEY CANAL COMPANY

( 1) Yakima Valley Water Management Study, "A Status Report on Water Quality Investigations, Yakima River Basin, Washington, for U.S. Bureau of Reclamation (Contract 14-06-100-9158)" by CH2M Hill, May 1977. (Herein "Status Report," May 1977.) at page 1.

( 2) Status Report, May, 1977, Page 10.

( 2.1) "Yakima Valley Water Management Study," Washington, Status Report, March, 1977, U.S. Bureau of Reclamation, Pacific Northwest Region, Boise, Idaho, (Herein "Status Report," March, 1977), Page 3.

( 3) "Consequences and Responsibility in Drought Forecasting: the Case of Yakima, 1977." Michael H. Glantz, Environmental & Societal Impacts Group. National Center for Atmospheric Research. March 1981. (Herein "Consequences"), Page 9.

( 4) "Status of the Water Resources Planning Program in the Yakima Basin," Robert T. Milhous, October, 1975, Department of Ecology, State of Washington, Olympia, Washington, (Herein "Report No. 24"), Appendix A, Page 1; Status Report, May, 1977, Page 3.

( 5) Report No. 24, Appendix A, Page 1.

( 6) Report No. 24, Appendix A, Page 1.

( 7) Status Report, March, 1977, Page 3; Consequences, Page 10.

( 8) Report No. 24, Appendix A, Page 1.

( 9) Status Report, May, 1977, Page 4.

(10) Status Report, May, 1977, Page 21.

(11) Status Report, March, 1977, Page 5.

(12) Status Report, May, 1977, Page 5.

(13) "Status of Water Quality in the Yakima Basin from 1976 to 1979," Water Power and Resources Service, Pacific Northwest Region, Boise, Idaho, May, 1980, (Herein "Status Report, May, 1980"), Pages 4, 5.

(14) "C. R. Lentz Review, Yakima Project Water Rights & Related Data," Preliminary Records, United States Department of the Interior, Bureau of Reclamation, Pacific Northwest Region, Yakima Project, Washington, December, 1974. (Herein "Lentz Review") Pages 5, 10.

(15) Status Report, May, 1977, Page 21.

(16) Status Report, May, 1977, Page 6.

(17) Status Report, May, 1977, Page 7.

(18) "History of Washington Project, 1902-1913," Pages 159, 160; Letter, W. H. Code, Chief Engineer, Indian Service to Secretary of the Interior, July 25, 1906; U.S. House of Representatives, Document No. 505, December 20, 1913, 63rd Congress, 2nd Session Report, Pages 3, 4.

(19) Letter, Secretary of the Interior to the Director, Geological Survey, December 12, 1905.

(20) Lentz Review, p. 192, Status Report, March 1977, Pages 2, 3, 9.

(21) Lentz Review, Pages 2, 3, 9.

(22) U.S. House of Representatives, Document No. 505, December 20, 1913, 63rd Congress, 2nd Session, Pages 8, 9.

(23) *Ibid.*

(24) *Id.* Pages 9, 10.

(25) Act of August 1, 1914, Section 22, 63rd Congress, 2nd Session, 38 Stat. 604.

(26) U.S. Congress, Senate Committee on Indian Affairs, Hearing on S. 1065, July 17, 1939, Pages 4, 9.

(27) Act of July 1, 1940, 76th Congress, 3rd Session, Chapter 496, 54 Stat. 707.

(28) Lentz Review, Page 163; Joint Letter, March 9, 1921, between Office of Indian Affairs and Bureau of Reclamation; Memo Agreement, approved by Secretary of the Interior, September 3, 1936.

(29) Status Report, May, 1977, Map following page 7; Affidavit of Louis B. Hilderbrand dated May 26, 1982 in *Holly v. Totus,* U.S. District Court, Eastern District of Washington, Civil Cause No. C-7802.

(30) In 1902 and 1907, there were an estimated 121,000 acres under irrigation in the Yakima basin. Status Report, May, 1977, Page 4; Status Report, May, 1980, Page 4.

(31) Affidavit of Louis B. Hilderbrand, *Supra,* Page 2.

(32) Affidavit of Leo D. Schilling, Regional Director, U.S. Bureau of Census, dated July 26, 1982, filed in *Holly v. Totus,* U.S. District Court, Eastern District of Washington, Civil Cause No. C-78-02.

(33) Complaint, ***Kittitas Reclamation District v. Sunnyside Valley Irrigation District,*** U.S. District Court, Eastern District of Washington, Civil No. 21 (Excerpts of the Record filed in ***Kittitas Reclamation District v. Sunnyside Valley Irrigation District,*** U.S. Court of Appeals, 9th Circuit, Nos. 80-3505,

81-3002, 81-3068, 81-3069, Pages 14, 15, 20, 21, 26, 27, 29(d) (e)); Cf. *Fox v. Ickes*, 137 F.2d 30, 35 (D.C. Cir., 1943).

(34) *Id.* Answer of Sunnyside Valley Irrigation District, ER 50-54, Answer of Yakima Valley Canal Company, ER 59-60, 66; Answer of Yakima-Tieton Irrigation District, Amended Answer of Sunnyside Valley Irrigation District and Yakima-Tieton Irrigation District.

(35) Affidavit of Yakima Project Superintendent William Gray dated April 11, 1977, *Kittitas Reclamation District v. Sunnyside Valley Irrigation District*, U.S. District Court, Eastern District of Washington, Civil Cause No. 21.

(36) Paragraph 20, Judgment, January 31, 1945, *Kittitas Reclamation District v. Sunnyside Valley Irrigation District*, U.S. District Court, Eastern District of Washington, Civil Cause No. 21.

(37) Report No. 24, Page 1.

(38) Consequences, Page 10; Status Report, May, 1980, Page 5.

(39) Crop Production Reports compiled by U.S. Bureau of Reclamation, Yakima Project for 1981.

(40) Status Report, May, 1977, Pages 10, 11.

(41) *Ibid.*

(42) Crop Production Reports compiled by U.S. Bureau of Reclamation, Yakima Project for 1981.

(43) Statement of Claims of the United States, filed September 1, 1981, *State v. Acquavella*, Yakima County, Washington, Superior Court Cause No. 77-2-01484-5.

(44) Letter, James B. Hovis, Attorney, Yakima Indian Nation to Honorable Geoffrey Crooks, Commissioner, Washington State Supreme Court, *State v. Acquavella, supra*, Washington Supreme Court Nos. 48894-4 and 48909-2.

YAKIMA VALLEY WATER MANAGEMENT STUDY

# YAKIMA RIVER BASIN
# WASHINGTON

STATUS REPORT
March, 1977

U.S. Bureau of Reclamation,
Pacific Northwest Region
Boise, Idaho

# IN THE
# SUPREME COURT
## OF THE
## UNITED STATES

OCTOBER TERM, 1982

STATE OF NEVADA,
*Petitioner,*

v.

UNITED STATES OF AMERICA, et al.,
*Respondent.*

and

TRUCKEE-CARSON IRRIGATION DISTRICT,
*Petitioner,*

v.

UNITED STATES OF AMERICA and
PYRAMID LAKE PAIUTE TRIBE OF INDIANS,
*Respondent.*

and

PYRAMID LAKE PAIUTE TRIBE OF INDIANS,
*Cross-Petitioner,*

v.

TRUCKEE-CARSON IRRIGATION DISTRICT, et al.,
*Cross-Respondents.*

**Brief of Amicus Curiae Yakima Valley Canal Company and Union Gap Irrigation District in Support of Petitioners**

**CERTIFICATE OF SERVICE**

I, DONALD H. BOND, a member of the bar of this Court hereby certify that three copies of the foregoing "Brief of Amicus Curiae Yakima Valley Canal Company and Union Gap Irrigation District in Support of

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